

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1080 of 1991

With

SPECIAL CIVIL APPLICATION No. 1081 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARILAL P SHAH and PARMANANDDAS JIVANBHAI OZA &
OTHERS.

Appearance:

In Special Civil Application No. 1080 of 1991:
MR VB GHARANIA, ASSISTANT GOVERNMENT PLEADER
for Petitioner.
MR HARIN P RAVAL for Respondent No. 1
NOTICE SERVED for Respondent No. 2

In Special Civil Application No. 1081 of 1991:
MR VB GHARANIA, ASSISTANT GOVERNMENT PLEADER
for Petitioner.
MR HARIN P RAVAL for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 28/04/2000

COMMON ORAL JUDGEMENT

These two writ petitions involve common questions of facts and law and therefore, they are being disposed of by this common judgment.

It is alleged in the petitions that there was some irregularities in the matter of purchase of sulphur by Una Taluka Khedut Sahakari Khand Udhog Mandali Limited during the year 1977-78 and 1978-79. Accordingly an inquiry was ordered under Section 86 of the Gujarat Co-operative Societies Act, 1961 by an order dt. 16th July, 1984. However the terms of reference were later on modified by a separate order of inquiry under Section 86 on 4th January, 1985. Inquiry was completed and report was submitted by Inquiry Officer on 18th August, 1986. On the basis of the report of the Inquiry Officer, the Registrar, Co-operative Societies, made an order to assess the damages under Section 93 of the Gujarat Co-operative Societies Act. The action of the Registrar for ordering to assess the damages under Section 93 of the Act has been challenged by the respondent no.1 of both these writ petitions by filing an appeal before the Gujarat State Co-operative Tribunal. Respondent no.1 of both the writ petitions separately filed two appeals which have been registered as Appeal Nos. 84 of 1987 and 85 of 1987. The Tribunal, after hearing the parties, allowed the appeals filed by the respondent No.1 by common order dt. 30th June, 1988. The Tribunal held that the acts which has been complained of relates to the period beyond five years from the date of order of inquiry by the Registrar under Section 86, and therefore, the Registrar had no power to assess the damages and pass an order under Section 93 of the aforesaid Act in view of limitation prescribed under Section 93 itself. Having felt aggrieved by the order of the Tribunal, the State Government has filed these two writ petitions for quashing the order of the Tribunal passed in both the appeals on 30th June, 1988.

Mr. Harin Rawal, learned counsel appearing on behalf of respondent No.1 submitted that the Tribunal has not committed any error of law because, Section 93 of the Gujarat Co-operative Societies Act, 1961 clearly provides that the Registrar can take action under Section 93 in respect of any inquiry which has been ordered under

Section 86 of the Act, but within a period five years in respect of any irregularity which has occurred within five years from the date of such inquiry. In the present case, it is evident that the inquiry was ordered by the Registrar on 16th July, 1984 which order has been subsequently modified by an order dt. 4th January, 1985 and the period of inquiry is of the years 1977-78 and 1978-79 co-operative year. Therefore, it is clear that the Registrar has passed the order under Section 93 of the Act on 4th January, 1987 for ascertaining the damages caused to the Society in respect of a period 1997-78 and 1978-79 which is ordinarily beyond a period of five years.

It is not disputed that the co-operative year 1978-79 ends on 30th June, 1979. Therefore the Registrar can make an order under Section 93 in respect of any irregularities which is within the period of five years from the date of inquiry ordered by the Registrar under Section 86. Since the present allegation is in respect of a period beyond five years, I am of the view that the Registrar has no right to make an order under Section 93 of the Act. The Tribunal has correctly held that the order of the Registrar suffers from irregularity. After going through the order passed by the Tribunal. I am of the view that there is nothing to interfere with the order passed by the Tribunal and no interference is called for. Accordingly I do not find any merits in both the writ petitions and accordingly both the writ petitions are dismissed. Rule is discharged. I make no order as to costs in both the writ petitions.

Date: 28/3/2000. (P.K.SARKAR, J.)

ccshah